

**UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-00001**

**Proposed Rulemaking Concerning
Amendment to the Rules of Practice
And Procedure**

Docket No. RM2004-1

COMMENTS OF PITNEY BOWES INC.

Pitney Bowes Inc. respectfully submits these comments pursuant to Order 1391, which invites comments on the Commission's proposal to add a definition of the term "postal service" to its Rules of Practice and Procedure, 39 C.F.R. § 3001.5. Pitney Bowes previously submitted comments pursuant to Orders 1364 and 1353 in connection with the petition filed by Consumer Action and the Office of the Consumer Advocate requesting Commission review of certain enumerated unclassified services. That petition has led to the current rulemaking.

The Postal Service Should Focus on Its Core Mission

Pitney Bowes has long advocated that the Postal Service should focus on its core mission. The mission of the Postal Service is and should be to maintain universal physical mail service by providing universal access and universal delivery at affordable prices. To accomplish this mission most effectively the Postal Service should work to continuously improve its established role of accepting, collecting, sorting, transporting, and delivering physical mail and packages.

The Postal Service's overriding objective should be to preserve and promote physical mail as a vital communications medium. The most effective means of "growing the mail" is to maximize the value of the mail to the sender and the recipient via improved service standards,

enhanced productivity, and reduced costs. By focusing on its core mission, the Postal Service can devote its resources and energies to the constant, vigorous improvement of the value of mail as a communications tool.

Pitney Bowes notes that under the leadership and administration of Postmaster General Potter, the Postal Service has renewed its focus on what has been historically understood as its core business, and has appropriately focused on enhancing the value of the mail and growing mail revenue and volume. In fact, Order 1388 acknowledges that the Postal Service has moved away from, or will soon terminate, many of the “non-postal” initiatives that led to the petition for rulemaking. Pitney Bowes further notes that pending postal reform legislation, as introduced in both the House and the Senate, evidences Congressional support for a Postal Service focused on its core mission.

To The Extent the Postal Service Engages In Activities Outside Its Core Mission, Regulatory Oversight is Essential

Although, as stated above, the Postal Service should focus on its core mission, to the extent the Postal Service chooses to engage in permissible non-core service offerings and product lines there must be adequate, independent regulatory oversight to ensure that (i) these non-core functions do not impair the Postal Service’s ability to fulfill its statutory mandate and (ii) the Postal Service does not improperly leverage its monopoly position to compete unfairly against the private sector for competitive services. The Commission’s Order acknowledges that “[t]he need for Commission review, with an opportunity for public participation is heightened because of the possibility (or even the likelihood) that new postal services may operate in competition with private sector services.” Order at 10-11. Pitney Bowes believes that the Postal Service should not enter new non-traditional markets that can be served by the private sector and that the Postal Service should not compete in markets that it substantially regulates.

Because the Postal Service is a U.S. Government entity with a statutorily defined monopoly and service obligation, regulatory oversight is essential. The Commission should retain a broad authority to oversee Postal Service activities, and the ability to determine what is or is not a postal service. As stated by the Commission, in determining whether a previously unreviewed service is appropriate for consideration by the Commission under the regulatory procedures specified under the Postal Reorganization Act, “the Commission is engaged essentially in exercising its mail classification authority, under which it is assigned primary responsibility for interpreting the status of services either proposed or offered by the Postal Service.” Order at 11-12 (citations omitted). The Commission’s review does not impinge on the management discretion of the Postal Service because the Postal Service remains free to develop and introduce new services and to characterize potential products and services as “postal” or “non-postal.” The Postal Service’s initial determination, however, does not preclude regulatory review for purposes of exercising the Commission’s statutory jurisdiction.

Because under existing law the Commission can only exercise jurisdiction over services deemed “postal services,” Pitney Bowes supports in this proceeding an expansive definition of “postal services” to ensure that the necessary regulatory oversight can be achieved. The proposed definition appears designed to allow such a broad construction.¹

The Commission is to be commended for moving forward with the proposed rulemaking in parallel to the legislative initiatives for postal reform moving through the Congress.

¹ The importance of Commission’s role in providing regulatory oversight for services and products offered by the Postal Service is further underscored by the recent Supreme Court decision in *United States Postal Service v. Flamingo Industries (USA) Ltd.*, No. 02-1290, 540 U.S. ____ (Feb. 25, 2004), in which the Court held that the Postal Service is not subject to the antitrust laws. In reaching this conclusion, the Supreme Court expressly referenced the fact that the Postal Service is subject to regulatory oversight by the Postal Rate Commission. See slip op. at 10-11. The importance of this ruling in the context of the present rulemaking is obvious; because the Commission’s oversight role was one of the factors that the Court relied on to justify not subjecting the USPS to the oversight of the antitrust laws, there is all the more reason to assure that the Commission’s oversight remains strong and effective.

Enactment of the pending legislation could largely resolve many of the concerns that led to this rulemaking by expressly limiting the Service to its core postal functions and statutorily defining those functions. Mindful of the uncertainties of the legislative process, however, it is prudent for the Commission to move forward with this important rulemaking now.

While the proposed rulemaking and the postal reform legislation offer competing definitions of “postal services,” the term in context has fundamentally different meanings. For purposes of the proposed rulemaking, the definition of the term “postal services” will define the scope of the Commission’s regulatory jurisdiction over products and services introduced by the Postal Service. In fact, the regulatory definition of “postal services” presupposes that the Postal Service will engage in non-core activities. Because Pitney Bowes believes that adequate, independent regulatory oversight of Postal Service activities is essential, Pitney Bowes supports the proposed definition for purposes of establishing the Commission’s jurisdiction although it is more expansive than that now under consideration by the Congress. In the legislative context, by contrast, the statutory definition of “postal services” will define the scope of the permissible business of the Postal Service. Because Pitney Bowes believes that the Postal Service should focus on its core mission, Pitney Bowes supports a narrow, focused legislative definition of “postal services” that will statutorily limit the Postal Service to these core services.

Accordingly, for the reasons stated above, Pitney Bowes encourages the Commission to move forward promptly to adopt a broad definition of “postal services.”²

Respectfully Submitted,

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² Pitney Bowes commends the Commission for moving expeditiously to initiate a rulemaking establishing enhanced reporting requirements for the Postal Service’s postal and non-postal activities. *See* Order 1394, PRC Dkt. No. RM2004-2, dated March 5, 2004.